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MICHAEL I. STEWART
Sim & McBurney
6th Floor, 330 University Avenue
Toronto, Ontario
Canada, M5G 1R7

In re Application of : DECISION ON
Sia et al :
Application No.: 09/647,981 :
PCT No.: PCT/CA99/00287 : RENEWED PETITION
Int. Filing Date: 07 April 1999 :
Priority Date: 07 April 1998 :
Attorney's Docket No.: 1038-1086 MIS:jb : UNDER 37 CFR 1.47(a)
For: HIV-SPECIFIC CYTOTOXIC-CELL
RESPONSES :
:

This decision is in response to applicants' "RENEWED PETITION UNDER 37 CFR 1.47(a)" filed on 15 January 2002 that seeks the acceptance of the application without the signature of the inventor Charles D.Y. Sia.

BACKGROUND

In decision from this Office 13 August 2001, applicant's petition filed on 07 May 2001 was dismissed. The decision stated that the petition had not satisfied items (2) and (4) of 37 CFR 1.47(a).

On 15 June 2002 applicant filed "Renewed Petition Under 37 CFR 1.47(a), which includes a declaration by Reza Yacoob.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by the 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

The petition of 07 May 2000 had satisfied items (1), and (3) of 37 CFR 1.47(a). However, items (2) and (4) were not satisfied.

The averments of Mr. Yacoob are not sufficient to support a finding that the nonsigning inventor refuses to join in the application because no documentary evidence to support this assertion has been provided (e.g. return signed receipt by Federal Express). Mr. Yacoob alleges that Mr. Sia refuses to sign because a copy of the patent application papers including the Specification, Claims, Drawings, and a Declaration was delivered by Federal Express to Mr. Sia for his execution on September 26, 2001, and to this date he has not responded. However, Mr. Yacoob has not provided a copy of the cover letter and the Federal Express receipt signed by Mr. Sia confirming that he received the application papers on September 26, 2001. A search at the Federal Express site indicates that no documents match the query entered- Tracking number 791660536261.

Accordingly, the steps enumerated by Mr. Yacoob are not sufficient to establish that the Mr. Sia has refused to sign the declaration because no documentary evidence to support this assertion has been provided.

Mr Yacoob's declaration, including his statements that Mr. Chong's oral refusal to sign the declaration on behalf of Charles D.Y. Sia is sufficient to satisfy requirement 4 under 37 CFR 1.47(a) as to inventor Sia, and items (1) and (4) as to inventor Chong. In this instance, Mr. Klein has signed on behalf of Mr. Sia and Mr. Chong.

Petitioner has still not satisfied item (2) under 37 CFR 1.47(a), thus not completing the requirements under 37 CFR 1.47(a).

DECISION

The petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration of the merits of the petition under 37 CFR 1.47(a) is desired, applicant must file a request for reconsideration within **TWO (2) MONTHS** from the mail date of this Decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)."

Any further correspondence with respect to this matter should be addressed to the Commissioner for Patents, Office of PCT Legal Administration, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office


Rafael Bacares
PCT Legal Examiner
PCT Legal Office
Telephone: (703) 308-6312
Facsimile: (703) 308-6459


Boris Milef
PCT Legal Examiner
PCT Legal Office